

## [H.R. 1734, Improving Coal Combustion Residuals Regulation Act of 2015](#)

### FLOOR SITUATION

On Wednesday, July 22, 2015, the House will consider [H.R. 1734](#), *the Improving Coal Combustion Residuals Regulation Act of 2015*, under a [structured rule](#). H.R. 1734 was introduced on April 13, 2015 by Rep. David McKinley (R-WV) and was referred to the Committee on Energy and Commerce, which ordered the bill reported by a vote of 32 to 19 on April 15, 2015.

### SUMMARY

H.R. 1734 establishes minimum federal requirements for the regulation of coal combustion residuals that all state permitting programs must incorporate. The requirements directly incorporate and effectively codify the protective standards established by the Environmental Protection Agency (EPA) in its final coal ash rule. The bill also establishes the process and deadlines for implementation of state permit programs.

The bill:<sup>1</sup>

- Authorizes states to immediately implement a coal ash permit program. States choosing to implement a permit program must include all of the requirements for such a program as provided for in the bill, but may make their programs more protective than the minimum federal requirements.
- Allows states to choose whether to implement a permit program. The EPA will implement a permit program for states choosing not to establish their own.
- Incorporates technical requirements set forth in the EPA's final coal ash rule to ensure that the standard for regulating coal ash is protective of human health and the environment.

---

<sup>1</sup> See Committee on Energy and Commerce [fact sheet](#)—"The Improving Coal Combustion Residuals Regulation Act of 2015"

Specifically, H.R. 1734 authorizes states to adopt and implement coal combustion residuals permit programs that include minimum requirements specified by the bill. States would be required to notify EPA within six months of enactment whether they intend to implement their own CCR permit program. Within two years, states are required to certify to EPA that their permitting program meets the minimum requirements for such a program established by the bill. States may request a twelve month extension of the deadline, but must describe their efforts to meet the original deadline, including demonstrating that the legislative or rulemaking procedures of the state are such that the state cannot meet that deadline. States seeking an extension also are required to provide a detailed schedule for completion and submission of the certification.<sup>2</sup>

If a state declines to implement its own permitting program or, after notice and comment, EPA determines that a state's program falls short of the minimum standards in the bill, then EPA would take steps to implement a permitting program for that state. If a state corrects a deficiency noted by EPA or chooses to take back its own permit program, the bill provides a mechanism by which a state may do so. The bill also sets out specific criteria for EPA to make a determination regarding whether a state permit program is deficient.<sup>3</sup> The bill further allows EPA to review state permit programs at any time to ensure that they meet minimum statutory requirements.

The federal minimum requirements for state permitting programs established by H.R. 1734 incorporate many of the requirements set forth in EPA's final coal ash rule to ensure that state programs are protective of human health and the environment. These requirements include those for design, structural integrity, inspections, public availability of information, groundwater monitoring and corrective action, air quality, record-keeping, run-on and run-off control, and location restrictions for new structures.<sup>4</sup>

H.R. 1734 also establishes a timeline for states to begin issuing permits once their permit programs are certified, and provides guidance for compliance with certain minimum standards during the intervening period.<sup>5</sup>

## BACKGROUND

Coal Combustion Residuals, (CCR) or "coal ash," is inorganic residue that remains after pulverized coal is burned.<sup>6</sup> According to the Congressional Research Service, "of the 135 million tons of CCR generated in 2009, approximately 94 million tons (69 percent) was disposed of," primarily in "landfills, surface impoundments, and as minefill."<sup>7</sup> "The remaining 40.7 million tons was beneficially used in some capacity, primarily as an ingredient in certain building materials (e.g., concrete, cement, or gypsum wallboard), as structural fill, as a waste stabilization ingredient, and as blasting grit."<sup>8</sup>

The Solid Waste Disposal Act, commonly referred to as the Resource Conservation and Recovery Act or RCRA, provides for the regulation of the management and disposal of waste. Subtitle C of RCRA "created a hazardous waste management program that, among other provisions, directs the Environmental Protection Agency (EPA) to develop criteria for identifying the characteristics of

---

<sup>2</sup> [House Report 114-143](#) at 11.

<sup>3</sup> Id. at 18 and 19.

<sup>4</sup> Id. at 12 to 15.

<sup>5</sup> Id. at 15 and 16.

<sup>6</sup> Id. at 8.

<sup>7</sup> See CRS Report—"[EPA's Proposal to Regulate Coal Combustion Waste Disposal: Issues for Congress](#)," October 7, 2011 at 9.

<sup>8</sup> Id.

‘hazardous’ waste and to develop waste management criteria applicable to such waste.”<sup>9</sup> Subtitle D of RCRA “established State and local governments as the primary planning, regulating, and implementing entities for the management of solid waste (i.e., household garbage (or municipal solid waste) and non-hazardous industrial solid waste).”<sup>10</sup>

The Solid Waste Disposal Act Amendments of 1980 (Public Law 96-482) included provisions—known as the Bevill Amendments—“that prevented EPA from imposing hazardous waste regulatory requirements for fossil fuel combustion (FFC) waste until EPA studied the issue to determine whether regulation of FFC waste under Subtitle C was warranted. In its 1993 and 2000 regulatory determinations, EPA considered the requisite factors and determined that regulation of FFC wastes, generally, and coal combustion residuals (CCR), specifically, was not warranted under Subtitle C.”<sup>11</sup>

On June 21, 2010, EPA proposed a rule (75 FR 35128) providing two regulatory options for management of CCRs. Under the first option, “EPA would reverse the 2000 regulatory determination and regulate CCR as a hazardous waste under Subtitle C.”<sup>12</sup> Under the second option, “EPA would continue to follow the findings of the 2000 regulatory determination, and CCR would remain classified as a non-hazardous waste regulated under Subtitle D.”<sup>13</sup>

EPA issued a final version of the rule on April 17, 2015.<sup>14</sup> The final rule, which becomes effective on October 14, 2015, regulates coal ash under Subtitle D, although the agency made clear that it remains in the process of evaluating whether to reverse its Bevill determination and regulate coal ash under Subtitle C. The final rule is also self-implementing, “meaning that it does not require issuance of permits and there will be no oversight or enforcement by a regulatory agency. Rather, owners and operators of facilities regulated under the final rule must comply with the requirements without the interaction of a regulatory authority by certifying compliance with the requirements and posting the certifications on an internet website.”<sup>15</sup>

However, in the preamble to the Final Rule, EPA noted that “if a State revises its Solid Waste Management Plan to incorporate the federal requirements, facilities in compliance with an EPA-approved State solid waste management plan for coal ash that is identical to or more stringent than the Final Rule should be viewed as meeting or exceeding the federal criteria.”<sup>16</sup> However, since there is no mechanism to legally incorporate the federal requirements into state programs, “even if a state adopts the Final Rule and incorporates the criteria into the state’s solid waste management program, the Final Rule remains in place as an independent set of requirements that must be met.”<sup>17</sup> H.R. 1734 is designed to remedy potential implementation issues by authorizing state permit programs that incorporate the provisions of the final rule.

According to the bill sponsor, “this legislation will provide closure and certainty to an issue that has been unresolved for over 30 years. 316,000 jobs are at risk from vague and harmful regulations. We

---

<sup>9</sup> See Committee on Energy and Commerce [Memorandum](#), April 10, 2015 at 1.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at 2.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> <http://www.gpo.gov/fdsys/pkg/FR-2015-04-17/pdf/2015-00257.pdf>

<sup>15</sup> [House Report 114-143](#) at 3.

<sup>16</sup> See Energy and Commerce [memorandum](#) at 2.

<sup>17</sup> *Id.*

need this common-sense reform to ensure coal ash programs meet standards to protect the environment while providing flexibility to the states on implementation.”<sup>18</sup>

The House passed a similar bill ([H.R. 2218](#)) by a vote of [265 to 155](#) on July 25, 2013. The Senate did not act on that measure before the 113<sup>th</sup> Congress adjourned.

## **COST**

The Congressional Budget Office (CBO) [estimates](#) that implementing H.R. 1734 would cost \$2 million over the 2016 to 2020 period, subject to the availability of appropriated funds. Enacting H.R. 1734 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

## **AMENDMENTS**

1. [Rep. John Shimkus \(R-IL\)](#)—The manager’s amendment updates the reference to the final rule and instead of referencing the date it was signed by the Administrator it inserts the date the final rule was published in the Federal Register.
2. [Rep. Frank Pallone \(D-NJ\)](#)—The amendment preserves transparency requirements in EPA’s final coal ash rule to ensure public access to information and accountability.
3. [Rep. Kathy Castor \(D-FL\)](#)—The amendment preserves cleanup requirements in EPA’s final coal ash rule to protect public health and ensure that air and groundwater pollution is addressed quickly and effectively.
4. [Rep. Gerald Connolly \(D-VA\)](#)—The amendment requires all inactive surface impoundments follow post-closure groundwater monitoring standards pursuant to section 257.104 subsections (b) and (c) of title 40, Code of Federal Regulations.
5. [Rep. Alma Adams \(D-NC\)](#)—The amendment requires the owner or operator of a coal combustion residuals surface impoundment to survey all drinking water supply wells that are within a half mile and down-gradient of the established waste boundary. Also requires the owner or operator of a coal combustion residuals surface impoundment to supply an alternative source of safe drinking water within 24 hours if well water sampling exceeds groundwater standards.
6. [Rep. G.K. Butterfield \(D-NC\)](#)—The amendment allows the Administrator of the Environmental Protection Agency to prevent the legislation from going into effect if it is determined to have a negative impact on vulnerable populations. Vulnerable populations include infants, children, adolescents, pregnant women, the elderly, individuals with preexisting medical conditions, individuals who work at coal combustion residuals treatment or disposal facilities, members of any other appropriate population identified by the Administrator based on consideration of socioeconomic status, racial or ethnic background, or other similar factors identified by the Administrator.

---

<sup>18</sup> See Press Release—“[McKinley Coal Ash Bill Advances](#),” April 15, 2015.

## **STAFF CONTACT**

For questions or further information please contact [Jerry White](#) with the House Republican Policy Committee by email or at 5-0190.